

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the responsible authority
for Independent School District No. 2580,
East Central, that Certain Data about
Jeanne Slama are Accurate and/or
Complete, on Remand

**RECOMMENDATION FOR
DISMISSAL**

The above-entitled matter is before Administrative Law Judge Steve M. Mihalchick pursuant to the December 22, 2004, Request of the Responsible Authority for Independent School District No. 2580, East Central (the Responsible Authority) that the matter be dismissed because the challenged data has been expunged.

Dale G. Swanson, Attorney at Law, 407 West Broadway Avenue, Forest Lake, MN 55025, represents Petitioner Jeanne Slama. Nancy E. Blumstein, Ratwik, Rozak & Maloney, P.A., 300 U.S. Trust Building, 730 Second Avenue South, Minneapolis, MN 55402, represents the Responsible Authority.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION and ORDER

IT IS RESPECTFULLY RECOMMENDED THAT the Commissioner of Administration DISMISS the appeal of Jeanne Slama in this matter because the data challenged by Ms. Slama have been expunged.

IT IS HEREBY ORDERED THAT:

1. All further proceedings in this matter, including discovery, depositions, and the hearing are hereby cancelled.
2. Petitioner's request for attorneys' fees and costs is DENIED.

Dated January 20, 2005.

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

On December 7, 2004, the Administrative Law Judge issued an Order on Discovery and Scheduling as requested by Petitioner Jeanne Slama. That Order allowed Petitioner to depose four witnesses and set the hearing to commence January 31, 2005.

By letter dated December 20, 2004, counsel for the Responsible Authority notified the Administrative Law Judge that the challenged data had been "removed and destroyed" and provided copies of documents of letters that had been mailed to Petitioner on November 2 and December 8, 2004 notifying Petitioner of that fact.

Petitioner responded to that letter the same day, noting that the letters used the term "removed," and that that is not a term used in the Data Practices Act. It also noted that simply removing and destroying the data could not moot the present proceeding because Petitioner had requested "expungement on the grounds the challenged data was false, inaccurate and incomplete."

On December 20, 2004, the Administrative Law Judge wrote counsel for Petitioner asking whether the School District's recent actions satisfied Petitioner's demands and whether the matter could now be dismissed.

On December 22, 2004, counsel for the School District sent counsel for Petitioner a revised letter addressed to Petitioner from the current Responsible Authority that was revised according to Petitioner's requests and accurately reflected the language that had been agreed to between counsel. It stated:

As the Responsible Authority under Minnesota Statute Chapter 13, I hereby confirm that the District has expunged by destruction the letters from Superintendent John Cambronne to you dated January 30 and September 8, 2004, as inaccurate or incomplete as challenged by you, as well as all other government data relating to the purported incident of January 29, 2003, denied by you.

Later that day, counsel for Petitioner wrote the Administrative Law Judge stating that he believed the revised letter mooted the issues in this matter. He requested that the Administrative Law Judge take no action until receiving confirmation from Petitioner's counsel that the original copy had been received by Petitioner.

Petitioner's counsel also stated in his letter that he had found no legal basis for an award of fees and expenses in the matter, but requested that the Administrative Law Judge make such an award if there was a basis for doing so. He also stated that the student had recently admitted him that there had never been a physical altercation between her and Petitioner, but that there had been a verbal disagreement on some date other than January 29, 2003.

On December 27, 2004, counsel for the School District wrote the Administrative Law Judge objecting to the request for attorneys' fees. She argued that fees were unwarranted because the School District had tried to resolve the matter informally since the beginning and that it was Petitioner's unreasonable refusals to resolve the matter that caused legal fees to be incurred. Her letter went on to state:

The District did not expunge the challenged data because it believed it to be inaccurate. It did so to avoid incurring further costs in this matter and because Ms. Slama no longer had a child in the District's schools. In short, the letter no longer served a purpose and was only a liability to the District.

On December 29, 2004, counsel for Petitioner responded to the attorneys' fees issue saying that the School District had never offered to expunge the data until after the Commissioner's Order in this matter and that many delays were caused by the District and its counsel.

Counsel for Petitioner noted his "shock and surprise," that, at least in his view, the December 27th letter had stated that the expungement had not been done "pursuant to the Data Practices Act," and that the School District had therefore committed an "unlawful action" in "destroying government data." He then requested that the Scheduling Order in this matter be modified to allow for completion of discovery and a hearing on the matter.

In a letter of January 3, 2005, counsel for the District explained that she had been responding to what she considered to be unwarranted attacks on the District's motives and willingness to resolve the matter, had not admitted any wrong doing as Petitioner's counsel alleged, and had been simply attempting to explain that the District agreed to resolve the matter by expunging the data as Petitioner had requested. In a letter of January 6, 2005, counsel for the District states that the District accepts Petitioner's statement that the data are inaccurate and has expunged the data pursuant to the Minnesota Government Data Practices Act and any prior inconsistent statements should be disregarded.

The Administrative Law Judge concludes that this matter has been resolved by the expungement of the data. The District expunged the data as requested by Petitioner and as a result of the data challenge and appeal made by Petitioner.

The reasons that parties settle lawsuits and administrative proceedings need not be disclosed and generally are not disclosed. There is nothing illegal or inappropriate about settling a matter to avoid further litigation and costs. On the contrary, it is encouraged. This matter is a contested case under Minn. Stat. Ch. 14. Minn. Stat. § 14.59 provides that informal disposition may be made of any contested case by arbitration, stipulation, agreed settlement, consent order or default.

At this point there is no settlement because Petitioner does not think the data were expunged for an appropriate reason. Nonetheless, the data were expunged, this matter has become moot, and it should now be dismissed. No doubt the District could

have expunged the data much earlier than it did, but Petitioner's attempt to clear her name has now turned into a great misuse of this proceeding and should not be allowed. If the data were expunged illegally, that is not an issue that can be addressed in this proceeding.

Nothing in Minn. Stat. § 13.04 provides for an award of attorneys' fees. Nor is Petitioner considered a "party" under Minn. Stat. § 15.471, subd. 6, so as to be entitled to attorneys' fees under Minn. Stat. §§ 15.471-15.474. Thus, the Administrative Law Judge has no authority to consider arguments as to the appropriateness of attorneys' fees or the fault of the parties that might justify attorneys' fees. It is unfortunate that this latest dispute arose out of statements made in the parties' arguments on attorneys' fees.

S.M.M.